

in children, the absence of information on the use of oral drugs to treat type 2 diabetes in children is a significant public health issue. Type 2 diabetes has become, in recent years, increasingly prevalent in children, recent epidemiological studies indicate that up to forty percent of newly diagnosed diabetic children have type 2 disease. Until last year, however, none of the fourteen oral medications approved for treatment of type 2 diabetes had been approved by the FDA for use in children.

Based on this treatment gap, in 1998 the FDA issued a written request to BMS seeking initiation of clinical studies regarding the safety and effectiveness of Glucophage in children; pursuant to this request, BMS agreed to conduct such studies. By responding favorably to the FDA's request for clinical trials, BMS stood to reap several significant advantages with respect to its exclusivity over Glucophage. Under the exclusivity provisions of the FFDCA, 21 U.S.C. §355a, completion of a pediatric clinical trial in accordance with the FDA's specifications entitles the patent holder to six months' additional exclusivity over the drug. Moreover, under provisions of the Hatch-Waxman Act, 21 U.S.C. §355(j)(5)(D)(iv), and the regulations promulgated thereunder, 21 CFR §314.108(b)(5)(ii), the FDA may grant three years' further exclusivity for labeling changes made possible by clinical investigations. In December 2000, the FDA granted BMS that three-year extension with respect to pediatric indications for Glucophage. In devoting time and resources to its pediatric clinical trials on Glucophage, BMS therefore reasonably relied on its statutory right to six months' exclusivity for following the FDA's pediatric clinical study guidelines, and it right to additional exclusivity under Hatch-Waxman if its research culminated in FDA-approved labeling changes.

By undoing the benefits promised to BMS for completing clinical trials on Glucophage, the proposed legislation would be a breach of contract. As the Supreme Court recently held with respect to Congress's abortive bailout of the savings and loan industry, "[w]hen the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals." *United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996) (plurality opinion). The Court affirmed the core principle of *Winstar* last year in *Mobil Oil Exploration & Producing S.E., Inc., v. United States*, 530 U.S. 604 (2000). In that case, the Court was asked to analyze the validity of the Outer Continental Shelf Lands Act ("OCSLA"), which barred offshore drilling for which oil companies had previously paid the United States \$158 million to receive permits. The court found that the passage of OCSLA violated the oil companies' rights under the contract, and that the government was required to return the \$158 million. *Id.* at 624. This was the case, according to the Court, despite the fact that the permits the oil companies received only entitled them to pursue drilling if they subsequently fulfilled certain regulatory requirements. *Id.* at 621. As the Court found, "[t]he oil companies gave the United States [a benefit] in return for a contractual promise to follow the terms of pre-existing statute and regulations. The new statute prevented the Government from keeping that promise. The breach substantially impaired the value of the contracts. And therefore the Government must give the companies their money back." *Id.* at 624 (internal citations and quotation marks omitted).

Just as was the case in the S & L and oil drilling situations, the proposed legislation here would deprive the party contracting with the government—in this case, BMS—the right to the benefit of the bargain it had struck with the United States. This breach by the government would entitle BMS to bring suit in the Court of Federal Claims under several theories of contract law, and would expose the United States to expensive and protracted litigation.

The SPEAKER pro tempore (Mr. FORBES). All time has expired.

The question is on the motion offered by the gentleman from Louisiana (Mr. TAUZIN) that the House suspend the rules and pass the bill, H.R. 2887, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BROWN of Ohio. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

AMERICAN SPIRIT FRAUD PREVENTION ACT

Mr. TAUZIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2985) to amend the Federal Trade Commission Act to increase civil penalties for violations involving certain proscribed acts or practices that exploit popular reaction to an emergency or major disaster declared by the President, and to authorize the Federal Trade Commission to seek civil penalties for such violations in actions brought under section 13 of that Act.

The Clerk read as follows:

H.R. 2985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Spirit Fraud Prevention Act".

SEC. 2. INCREASE IN PENALTIES FOR UNFAIR OR DECEPTIVE ACTS OR PRACTICES EXPLOITING REACTION TO CERTAIN EMERGENCIES AND MAJOR DISASTERS.

(a) VIOLATIONS OF PROHIBITION AGAINST UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—Section 5(m)(1) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)) is amended by adding at the end the following:

"(D) In the case of a violation involving an unfair or deceptive act or practice in an emergency period or disaster period, the amount of the civil penalty under this paragraph shall be double the amount otherwise provided in this paragraph, if the act or practice exploits popular reaction to the national emergency, major disaster, or emergency that is the basis for such period.

"(E) In this paragraph—

"(i) the term 'emergency period' means the period that—

"(I) begins on the date the President declares a national emergency under the Na-

tional Emergencies Act (50 U.S.C. 1601 et seq.); and

"(II) ends on the expiration of the 1-year period beginning on the date of the termination of the national emergency; and

"(ii) the term 'disaster period' means the 1-year period beginning on the date the President declares an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)."

(b) VIOLATIONS OF OTHER LAWS ENFORCED BY THE FEDERAL TRADE COMMISSION.—Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by adding at the end the following:

"(e)(1) If a person, partnership, or corporation is found, in an action under subsection (b), to have committed a violation involving an unfair or deceptive act or practice in an emergency period or a disaster period, and if the act or practice exploits popular reaction to the national emergency, major disaster, or emergency that is the basis for such period, the court, after awarding equitable relief (if any) under any other authority of the court, shall hold the person, partnership, or corporation liable for a civil penalty of not more than \$22,000 for each such violation.

"(2) In this subsection—

"(A) the term 'emergency period' means the period that—

"(i) begins on the date the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

"(ii) ends on the expiration of the 1-year period beginning on the date of the termination of the national emergency; and

"(B) the term 'disaster period' means the 1-year period beginning on the date the President declares an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from New York (Mr. TOWNS) each will control 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. TAUZIN).

GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2985.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, September 11 brought this country face-to-face with what was once thought to be an unimaginable series of events. However, these cowardly acts of terrorism sparked in this country an unprecedented level of generosity, an outpouring of spirit, of patriotism, but also of dollars.

Immediately, from every corner of this country, charities were inundated with money, with food, with clothing. Hospitals saw long lines of people offering to donate blood. Here in this Capitol complex Members and wives and husbands and staff lined up to donate

blood. Shelters for the injured and homeless sprang up out of office buildings, restaurants and small businesses. Financial donations alone exceeded \$1 billion.

If there is ever any silver lining in this national tragedy that this awful atrocity created upon the people of this land, it is this: We saw the incarnation of the American spirit again, the true strength of our country, the true, indeed, the blessed meaning of the United States of America.

But as with this and any disaster, there are unscrupulous people who will take advantage of that generosity. Unfortunately, this national emergency was no different. On the heels of the September 11 atrocities, we heard stories of scam telemarketers and scam charities trying to collect for "disaster relief" and crooks appearing to be affiliated with fire department fund-raising groups going door-to-door asking for funds. H.R. 2985 is aimed directly at these scam artists.

The American Spirit Fraud Prevention Act declares frauds during these times to be different. H.R. 2985 allows the Federal Trade Commission to increase civil penalties for unfair and deceptive acts or practices that exploit this Nation's reaction to a national emergency or a national disaster. With this bill, the FTC can collect up to \$22,000 in civil penalties for each and every violation. This will send a strong and unequivocal message to criminals hoping to prey on the kindness of strangers, "You will pay."

I want to thank the gentleman from Georgia (Mr. DEAL) and the gentleman from New Hampshire (Mr. BASS), the original sponsors of the American Spirit Fraud Prevention Act. This is an excellent bill. I strongly urge its passage. I hope those who would scam the generosity of Americans in this tragic time will pay attention tonight, because, if they do not, the FTC will see you in court.

Mr. Speaker, I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as ranking member on this Subcommittee on Commerce, Trade and Consumer Protection, I am pleased to join the gentleman from Florida (Chairman STEARNS), the chairman of the subcommittee, in cosponsoring H.R. 2985, the American Spirit Fraud Prevention Act. The Committee on Energy and Commerce has reported the bill to the House by voice vote and without any amendments.

Mr. Speaker, this legislation says to any con artist, do not even think about it, trying to capitalize on national emergencies or disasters. It will not be worth it.

For con artists that exploit popular reaction to a presidentially declared emergency or major disaster, this bill requires the Federal Trade Commission

to double the maximum civil penalties from \$11,000 to \$22,000 per violation. The courts have said that each day the fraud occurs constitutes a separate violation subject to the full civil penalties. In other words, it says crime does not pay. At \$22,000 a day, it will be very costly for any scam artist to perpetrate frauds that exploit the tragedy of September 11 in New York City.

Fortunately, we have not seen a lot of fraud involving the horrific events of September 11. The FTC reports that it is investigating each and every complaint that is made. So far, no frauds have been identified by the FTC investigation, but let me tell you, those investigations are continuing.

Although there is no evidence yet of collections for phony charities or sales of gas masks or other products that do not perform as advertised, the best way to prevent fraud is to make sure it is well known that fraud simply will not be tolerated. Experience has shown that, given the opportunity, fraud will occur. This legislation makes clear that the price has just gone way up for taking advantage of people in a time of crisis.

Mr. Speaker, I urge my colleagues to vote for H.R. 2985, the American Spirit Fraud Prevention Act.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from New Hampshire (Mr. BASS), one of the two authors of the legislation.

Mr. BASS. Mr. Speaker, I thank the distinguished chairman of the committee for yielding me time.

Mr. Speaker, a little more than 2 months ago, America was visited by an unspeakable horror. For the first time in more than a century and a half, this Nation was attacked viciously on its own home territory.

In the weeks since September 11, the Nation has mourned, has expressed anger, has been anxious, concerned, but also very generous. The American spirit it has reached levels that now stands as a symbol of this Nation's greatness and ability to support a just cause, the relief of the victims of these tragedies and their families.

But we have also seen the darker side of humanity. Reports of people using this tragedy and the generous American spirit for their own gain have appeared. The Department of Justice, the Federal Trade Commission and the States attorneys general have some powers to prosecute those engaged in fraud and deceptive practices, but we must make it clear that we will severely punish those who aim to take advantage of America's charity or an organization's good name during an emergency.

Congress must also make sure that consumers are not inundated with false and deceptive claims about goods and

services that would exploit the circumstances of an emergency or disaster. Whether it is selling Cipro or other drugs under false information or offering fraudulent terrorist insurance, these practices must carry a penalty commensurate with their nature. We cannot let the detestable actions of so few mar the pride and patriotism we all share over the phenomenal generosity and outpouring of support from across America and the world. We cannot let the fear and anxiety of our citizens be preyed upon by scam artists peddling their cheats and swindles.

I have no doubt that the victims, their families and friends and all Americans are as humbled as I am with the response of this country. Now we need to ensure that those who would abuse this determined American spirit are equally staggered at our response.

The American Spirit Fraud Prevention Act would double the penalties the FTC could levy during times of presidentially declared emergencies and disasters if the offending action aimed to exploit the crisis. These times, sadly, occur more often than one might think, and the attempts to profit from them follow just as regularly. All hope of profit and gain must be removed from the equation of these people.

I just want to say that this effort would not have been possible without the support of the bill's coauthor, my friend, the gentleman from Georgia (Mr. DEAL); the gentleman from Louisiana (Chairman TAUZIN); the gentleman from Florida (Chairman STEARNS); the ranking member, the gentleman from New York (Mr. TOWNS); and the entire Committee on Energy and Commerce. I thank you all for your help with this, and I urge its prompt passage.

Mr. TOWNS. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, this legislation gives the FTC the power to protect the consumers. Quite often, when people are grieving, they become extremely vulnerable, and people will go in and take advantage of them. But this legislation says that the teeth are there now, and that the FTC can protect people that have these kinds of problems.

It is my understanding that we have not had a lot of this up to this point, but I think it would be foolish for us not to put the legislation in place to let people know that if you do do it, you will be penalized and you will be penalized severely. I think this legislation does that.

I want to thank my colleagues on the other side, of course, the gentleman from Florida (Mr. STEARNS), and of course, the gentleman from Louisiana (Mr. TAUZIN), and all the others on the Democratic side for the support of this legislation; because coming from New York and knowing in terms of the kind of tragedies that we have had over the past few months, in terms of September 11, and then yesterday in terms

of the crash in Queens, New York, we have had some tough times. I think that we need to make certain that the people do not go through a double kind of tough time by people coming in and defrauding them.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me thank my good friend, the gentleman from New York (Mr. TOWNS) for his statement and strong support of this legislation. More importantly, I thank him for his excellent cooperation on this and so many pieces of legislation that we have worked together on in the Committee on Energy and Commerce. You are indeed, sir, a great public servant. I want to thank you for that.

Let me also clarify something: This bill amends the FTC statutes to deal with fraud and scam artists. It does not affect the issue that was heard before our committee just recently on the question of what is being done with the funds raised by legitimate charities, such as the United Way and Red Cross. This does not deal with that. I do not want this bill confused with those good charities who do such good work around our country.

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On the other hand, I want to use this opportunity to urge the American Red Cross, who I understand will be here tomorrow for a press conference on the issue raised at our hearings, I think just last week on the subject matter, I want to urge the American Red Cross to reconsider its position. Americans all over this land, in small towns and hamlets and in rural settings, rose to the call of the Red Cross to donate money to the victims and their families in New York and here in Washington and the families in Pennsylvania who suffered on September 11, and raised the unprecedented, I think, \$547 million for the Red Cross for that special purpose.

To divert those funds to some other purpose, I believe, in my humble opinion, would not be consistent with honoring the donations of these many millions of Americans to the families who suffered so horribly on September 11. Those donations were made not to the Red Cross, but through the Red Cross to those families. I think the more the Red Cross does, the more the United Way does and the other charities do to get that money to those families, the more the American public will appreciate it, and I think even be more generous to the Red Cross and the United Way and other charities when they are called upon again to respond for whatever tragedies we may suffer, tornadoes or earthquake disasters this country may face in the future.

I understand the Red Cross may tomorrow simply say, if you do not like

what we are doing with the money, call us and we will refund it. That is not a good answer. That is a terrible answer. Americans do not want a refund. They want the money they donated for those families to go to those families and they want the Red Cross and other charities to honor those donations.

So again as a friend of the Red Cross, as a supporter of the Red Cross, as a great supporter of the United Way, this Congress has always supported those institutions, I want to urge the Red Cross again to reconsider their position. Those monies were not donated for a reserve account, they were donated through you to the families who suffered on September 11. You ought to have the decency to make sure those families get that money as quickly as you can, because doggone it, that is what Americans intended when they sent that money into you in such record amounts.

Mr. DEAL of Georgia. Mr. Speaker, the tragic events of September 11, 2001 were a blow to this nation. The attacks showed we were vulnerable to an outside attack. As bad as these attacks were, they did showcase the spirit of America. We, as Americans, did not roll over, we came together and showed the world why this land is great.

One way many decided to help was through financial donations to any one of numerous charitable organizations to help those in need. As we have seen over the past several months, Americans have been very generous in their giving. The best of America has been on display. However, just underneath the surface of these kind souls, is a group of individuals that try to take advantage of tragic events and people's generosity.

There are people out there who try to scam money and say it is for relief efforts. They use the telephone and Internet in order to solicit donations. The problems lies in the fact that even though on the surface these solicitations seem legitimate, they are not. The money usually goes directly into the person's pocket and never is used to help those in need. For this reason, I am proud to have been able to work with the gentleman from New Hampshire on this bill. It is important to make the penalties for fraud during times of national emergency so high, no one will attempt such deeds. It is also important that we send a message to the American people that such frauds will not be tolerated and they can feel safe in the fact that anyone who perpetrates such crimes will be punished. Let the American spirit shine through and may we continue to help those in need.

Mr. TAUZIN. Mr. Speaker, I urge adoption of the bill, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FORBES). The question is on the motion offered by the gentleman from Louisiana (Mr. TAUZIN) that the House suspend the rules and pass the bill, H.R. 2985.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

PRaising JOSEPH VINCENT PATERNO FOR HIS STEADFAST COMMITMENT TO ACADEMICS, SERVICE, AND CITIZENSHIP, AND CONGRATULATING HIM FOR HIS MANY COACHING ACCOMPLISHMENTS

Mr. ISAKSON. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 276) praising Joseph Vincent Paterno for his steadfast commitment to academics, service, and citizenship, and congratulating Joseph Vincent Paterno for his many coaching accomplishments, including his 324th career coaching victory.

The Clerk read as follows:

H. RES. 276

Whereas Joseph Vincent Paterno coached the Penn State Nittany Lions football team to a 29 to 27 victory over the Ohio State Buckeyes on October 27, 2001, at Beaver Stadium in Happy Valley with 108,327 patrons in attendance;

Whereas that victory was Joe Paterno's 324th career coaching victory, making him the winningest Division I-A football coach in NCAA history;

Whereas Joe Paterno launched what he termed "The Great Experiment" on February 19, 1966, upon being named the head football coach at the Pennsylvania State University (Penn State);

Whereas Joe Paterno defined "The Great Experiment" as a demonstration that Division I student-athletes can achieve greatness on the field while excelling in the classroom, and can become valuable assets to the community in their postgraduate endeavors;

Whereas Joe Paterno has nurtured 21 first-team Academic All-Americans, 14 Hall of Fame Scholar-Athletes, and 17 NCAA postgraduate scholarship winners;

Whereas from 1996 to 2000 Joe Paterno nurtured 69 Academic All-Big Ten football honorees, more than any other Big Ten Conference institution during that period;

Whereas according to the 2000 NCAA Graduation Rate Report, the 4-year graduation rate of Joe Paterno's Penn State players was 76.5 percent, significantly above the 48 percent national average;

Whereas Joe Paterno and his wife Sue have continually demonstrated their loyalty and commitment to Penn State through volunteer efforts and contributions, including a \$3,500,000 gift—the most generous gift ever given to a university by a coach and his family—for academic scholarships, faculty endowments, and campus construction projects;

Whereas immediately following his first national championship in January of 1983, Joe Paterno bypassed the customary acceptance speech and instead pressed the University's Board of Trustees to make Penn State number one in academics as well as athletics and began advocating for the libraries of Penn State;

Whereas Joe and Sue Paterno subsequently served as Co-Chairs of the Campaign for the Library which raised \$11,000,000 for an expansion effort that would double the size of the existing library at Penn State's University Park campus;

Whereas the Paternos' generosity and vision were recognized by the vote of Penn